

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN SCOTT VARNER,

Petitioner,

v.

Civil No. 2:16-CV-14481
HONORABLE VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE

LORI GIDLEY,

Respondent,

**OPINION AND ORDER RE-ASSIGNING PETITION FOR WRIT OF HABEAS
CORPUS AS A COMPANION CASE TO CASE NO. 1:16-CV-14388, DIRECTING
THE CLERK OF THE COURT TO RE-FILE THE PLEADINGS IN CASE NO.
2:16-CV-14481 UNDER CASE NO. 1:16-CV-14388, AND DISMISSING THE
CURRENT PETITION AS DUPLICATIVE**

Kevin Scott Varner, (“Petitioner”), confined at the Central Michigan Correctional Facility in St. Louis, Michigan, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction for unlawful possession of controlled substances with intent to deliver, M.C.L.A. 333.7401(2)(a)(iv), and resisting and obstructing a police officer, M.C.L.A. 750.81d(1).

Petitioner previously filed a petition for writ of habeas corpus challenging these convictions, which remains pending before Judge Thomas L. Ludington. *See Varner v. Gidley*, No. 1:16-CV-14388. A decision has not yet been rendered in that case.

Petitioner’s current petition seeks habeas relief from the convictions that he challenges in his petition before Judge Ludington and raises the identical claims.

Petitioner may, in fact, be attempting to file a brief in support of the petition that he filed before Judge Ludington, because his current pleading is entitled “Brief in Support of Petition for Writ of Habeas Corpus.”

The Court orders that the petition for writ of habeas corpus be re-assigned as a companion case to Petitioner’s previously filed habeas petition in Case No. 1:16-CV-14388. The Court dismisses the current petition as duplicative of that petition. The Court orders that the pleadings filed in Case No. 2:16-CV-14481 be re-filed by the Clerk of the Court under Case Docket No. 1:16-CV-14388.

Eastern District of Michigan Local Rule 83.11 governs the re-assignment of companion cases, stating that “[c]ompanion cases are those in which it appears that: (I) substantially similar evidence will be offered at trial, or (ii) the same or related parties are present, and the cases arise out of the same transaction or occurrence.” U.S. Dist.Ct. Rules, E.D. Mich. LR 83.11(b)(7). *See also Sims-Eiland v. Detroit Bd. of Educ.*, 184 F.R.D. 268, 269, n. 1 (E.D. Mich. 1999). Also, in the interests of time and judicial economy, Petitioner’s two habeas applications should be consolidated into one action pursuant to Fed.R.Civ. P. 42. *See Bernal v. Helman*, 958 F. Supp. 349, 351-52 (N.D. Ill. 1997). The Court re-assigns Case No. 2:16-CV-14481 to Case No. 1:16-CV-14388. The Court also orders that the pleadings filed in this case be re-filed in Case No. 1:16-CV-14388.

The Court dismisses Case No. 2:16-CV-14481, because it is duplicative of Case No. 1:16-CV-14388. A suit is duplicative, and thus subject to dismissal, if the claims,

parties, and available relief do not significantly differ between the two actions. *See Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999)(internal citations omitted). Petitioner's current habeas petition is subject to dismissal as being duplicative of his still pending first habeas petition, because both cases seek the same relief. *Id.*; *See also Davis v. U.S. Parole Com'n*, 870 F. 2d 657 (Table), No. 1989 WL 25837, * 1 (6th Cir. Mar. 7, 1989)(district court can properly dismiss a habeas petition as being duplicative of a pending habeas petition, where the district court finds that the instant petition is essentially the same as the earlier petition); *Christy v. Lafler*, No. 2005 WL 3465844, * 1 (E.D. Mich. Dec. 19, 2005)(same).

ORDER

The Clerk of the Court is **ORDERED** to close Case No. 2:16-CV-14481 and re-assign the case as a companion case to *Varner v. Gidley*, U.S.D.C. No. 1:16-CV-14388.

The Clerk of Court shall re-file in Case Docket No. 1:16-CV-14388 the docket entries from Case Docket No. 2:16-CV-14481.

S/ VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE

DATED: January 11, 2017